



Recovery of Attorneys' Fees in Special Education Due Process Hearings

Can parents recover their attorneys' fees in a due process case?

Yes. If a parent of a child with a disability is the prevailing party at a due process hearing, they can ask either the state circuit court or federal district court to award attorneys' fees. That court – in its discretion – can order the school district to pay the parent's reasonable attorneys' fees.

I had an attorney at an IEP meeting and mediation before we filed for due process. Can I recover those fees?

No. Generally, parents are responsible for paying their own attorneys' fees. Parents cannot recover attorneys' fees related to any VDOE complaint, mediation, or IEP meeting, unless that meeting occurred as part of, or the result of, an administrative proceeding or judicial action.

The school district made an offer to settle the case. How does that affect my ability to get an award of attorneys' fees?

If a parent is the prevailing party at a due process hearing and was substantially justified in rejecting a settlement offer, the parent can recover fees for services their attorney performed after they received that settlement offer.

However, parents cannot recover attorneys' fees for services performed subsequent to a written settlement offer from the school district, if the offer was:

- Made at least 10 calendar days before the proceedings began,
- Not accepted within 10 days, and
- A court or administrative hearing officer found that the relief the parents ultimately received was not more favorable than the settlement offer.

Can school districts ever recover attorneys' fees from parents?

Like parents, school districts are generally responsible for their own attorneys' fees. But, if the school district is the prevailing party, the court can award the following school districts legal fees:

- Against the parent's attorney, if the parent's request for due process was found to be frivolous, unreasonable, or lacked foundation; or the attorney continued to litigate after the litigation was clearly frivolous, unreasonable, or without foundation.

- Against the attorney for the parents or the parents if the request for due process was presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the litigation.

When awarding attorneys' fees, how does a court determine what fees are reasonable?

Attorneys' fees are based on the hourly rates attorneys charge to perform their services. Courts determine if fees are reasonable by comparing the parent's attorney's rate to the rates of other attorneys in the community in similar cases for a comparable kind and quality of services.

Courts can reduce an attorneys' fee award if:

- The amount of attorneys' fees is unreasonable because it exceeds the hourly rate that prevails in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- The time spent and legal services the attorney provided were excessive considering the nature of the case;
- During the course of the action or proceeding, the parent or parent's attorney unreasonably prolonged the final resolution of the controversy; or
- The parent's attorney did not provide the local educational agency with the appropriate information in the due process hearing request.

However, if the court finds that VDOE or a local educational agency unreasonably prolonged the final resolution of the controversy or violated any of the IDEA's procedural safeguards, the above do not apply and a court cannot reduce a parent's attorneys' fee award for any of those reasons.

References:

20 U.S.C. § 1415(i)(3)
34 C.F.R. § 300.517
8 Va. Admin. Code § 20-81-310

If you have questions or want to speak with someone about your rights, contact the disAbility Law Center of Virginia at 1-800-552-3969 or info@dLCV.org.